

## Department of Justice

## § 2.81

and not by the Total Point Score at the current hearing, which indicates only whether parole should be granted or denied. Exception: In the case of institutional misconduct deemed insufficiently serious to warrant the addition of one or more points for negative institutional behavior, the Commission may nonetheless deny or rescind parole and render a decision based on the guideline ranges at § 2.36.

(3) At any initial hearing or rehearing, if the prisoner's Total Point Score is 4 or less, the Commission may order both a rehearing date and a presumptive parole date that is not more than 9 months from the rehearing

date. Such presumptive date may be converted to a parole effective date following the rehearing, or the case may be reopened based on new favorable information and a parole effective date granted on the record.

(m) *Guidelines for decisions at subsequent hearing—adult offenders.* In determining whether to parole an adult offender at a rehearing or rescission hearing, the Commission shall take the Total Point Score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
If Points = 0–3 .....	Parole with highest level of supervision indicated.
If Points = 4+ .....	Deny parole at rehearing and schedule a further rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (l) of this appendix.

(n) *Guidelines for decisions at subsequent hearing—youth offenders.* (1) In determining whether to parole a youth offender appearing at a rehearing or rescission hearing, the Commission shall take the Total Point Score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
If Points = 0–3 .....	Parole with highest level of supervision indicated.
If Points = 4+ .....	Deny parole and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (l) of this appendix, whichever is less.

(2) Prison officials may in any case recommend an earlier rehearing date than ordered by the Commission if the Commission's program objectives have been met.

(o)(1) The Commission may, in unusual circumstances, waive the Salient Factor Score and the pre- and post-incarceration factors set forth in this section to grant or deny parole to a prisoner notwithstanding the guidelines, or to schedule a reconsideration hearing at a time different from that indicated in paragraph (1) of this appendix. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the notice of action the specific factors that it relied on in departing from the applicable guideline or guideline range. For examples of factors that may warrant a decision outside the applicable guideline range, see § 2.80(n).

(2) If the prisoner is deemed to be a poorer or more serious risk than the guidelines indicate, the Commission shall determine what Base Point Score would more appropriately fit the prisoner's case, and shall render its initial and rehearing decisions as if the prisoner had that higher Base Point Score. If possible, the factors justifying such a depar-

ture shall be fully accounted for in the initial continuance, so that the guidelines can be followed at subsequent hearings. In some cases, however, an extreme level of risk presented by the prisoner may make it inappropriate for the Commission to contemplate a parole at any hearing without a significant change in the prisoner's circumstances.

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### § 2.81 Reparole decisions.

(a) If the prisoner is not serving a new, parolable D.C. Code sentence, the Commission's decision to grant or deny reparole on the parole violation term shall be made by reference to the reparole guidelines at § 2.21. The Commission shall establish a presumptive or effective release date pursuant to § 2.12(b), and conduct interim hearings pursuant to § 2.14.

(b) If the prisoner is eligible for parole on a new D.C. Code felony sentence that has been aggregated with the prisoner's parole violation term, the Commission shall make a decision to grant

## § 2.82

## 28 CFR Ch. I (7–1–01 Edition)

or deny parole on the basis of the aggregate sentence, and in accordance with the guidelines at § 2.80.

(c) If the prisoner is eligible for parole on a new D.C. Code felony sentence but the prisoner's parole violation term has not commenced (*i.e.*, the warrant has not been executed), the Commission shall make a single parole/reparole decision by applying the guidelines at § 2.80. The Commission shall establish an appropriate date for the execution of the outstanding warrant in order for the guidelines at § 2.80 to be satisfied. In cases where the execution of the warrant will not result in the aggregation of the new sentence and the parole violation term, the Commission shall make parole and rep parole decisions that are consistent with the guidelines at § 2.80.

(d) All rep parole hearings shall be conducted according to the procedures set forth in § 2.72, and may be combined with the holding of a revocation hearing if the prisoner's parole has not previously been revoked.

### § 2.82 Effective date of parole.

(a) A parole release date may be granted up to nine months from the date of the hearing in order to permit the prisoner's placement in a halfway house or to allow for release planning. Otherwise, a grant of parole shall ordinarily be effective not more than six months from the date of the hearing.

(b) Except in the case of a medical or geriatric parole, a parole that is granted prior to the completion of the prisoner's minimum term shall not become effective until the prisoner becomes eligible for release on parole.

### § 2.83 Release planning.

(a) All grants of parole shall be conditioned on the development of a suitable release plan and the approval of that plan by the Commission. A parole certificate shall not be issued until a release plan has been approved by the Commission. In the case of mandatory release, the Commission shall review each prisoner's release plan to determine whether the imposition of any special conditions should be ordered to promote the prisoner's rehabilitation and protect the public safety.

(b) If a parole date has been granted, but the prisoner has not submitted a proposed release plan, the appropriate correctional or supervision staff shall assist the prisoner in formulating a release plan for investigation.

(c) After investigation by a Supervision Officer, the proposed release plan shall be submitted to the Commission 30 days prior to the prisoner's parole or mandatory release date.

(d) A Commissioner may retard a parole date for purposes of release planning for up to 120 days without a hearing. If efforts to formulate an acceptable release plan prove futile by the expiration of such period, or if the Offender Supervision staff reports that there are insufficient resources to provide effective supervision for the individual in question, the Commission shall be promptly notified in a detailed report. If the Commission does not order the prisoner to be paroled, the Commission shall suspend the grant of parole and conduct a reconsideration hearing on the next available docket. Following such reconsideration hearing, the Commission may deny parole if it finds that the release of the prisoner without a suitable plan would fail to meet the criteria set forth in § 2.73. However, if the prisoner subsequently presents an acceptable release plan, the Commission may reopen the case and issue a new grant of parole.

(e) The following shall be considered in the formulation of a suitable release plan:

(1) Evidence that the parolee will have an acceptable residence;

(2) Evidence that the parolee will be legitimately employed as soon as released; provided, that in special circumstances, the requirement for immediate employment upon release may be waived by the Commission;

(3) Evidence that the necessary aftercare will be available for parolees who are ill, or who have any other demonstrable problems for which special care is necessary, such as hospital facilities or other domiciliary care; and

(4) Evidence of availability of, and acceptance in, a community program in those cases where parole has been granted conditioned upon acceptance or participation in a specific community program.